

WATER RIGHT OWNERSHIP TRANSFER AGREEMENT

This Water Right Ownership Transfer Agreement (“Agreement”) is made and entered into this ____ day of _____ 2018, between Trout Unlimited, a Michigan non-profit corporation (“TU”), with a mailing address of 321 East Main Street, Suite 411, Bozeman, MT 59715 (“Donor”), and Montana Fish, Wildlife and Parks, a state agency of Montana (“FWP”), with a mailing address of 1420 East Sixth Ave., Helena, MT 59620-0701 (“Donee”). TU and FWP are sometimes referred to in this agreement individually as “Party” and collectively as “Parties.”

RECITALS

- I. TU recently acquired ownership of two water right claims severed from former mining properties at Jardine, Montana, including Water Right Statement of Claim numbers **43B 194641 00** and **43B 134019 00**, the General Abstracts of which are attached hereto as **Exhibit B** (the “Water Rights”).
- II. FWP has the authority to hold a water right in fee simple and to change it’s purpose of use to instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource. §§ 87-1-209, 85-2-436, MCA.
- III. The source of 43B 194641 00 is Bear Creek, a tributary of the Yellowstone River, and the source of 43B 134019 00 is Pine Creek, a tributary to Bear Creek.
- IV. TU and FWP desire to enhance instream flows in Bear and Pine Creek. The primary objective is to maintain sufficient flow in both creeks to augment the streams’ important role as critical habitat for native Yellowstone cutthroat trout.
- V. TU intends to make a charitable donation of the Water Rights to FWP, and FWP intends to accept the donation of the Water Rights from TU. FWP intends to use the Water Rights to maintain and enhance the instream flows in Bear Creek and Pine Creek.

NOW THEREFORE, in consideration of the mutual promises, covenants, conditions, and representations set forth herein, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties hereto mutually agree as follows:

SECTION 1. TRANSFER IN OWNERSHIP OF WATER RIGHTS

- 1.1. Transfer of Water Right. TU shall donate, assign and transfer, and FWP shall accept all of TU’s right, title and interest in and to the above-described Water Rights

on the terms and subject to the conditions below.

1.2. Water for Mitigation. Pursuant to sections 3.3 and 9.4 FWP shall change a portion of the water rights to the beneficial purpose of mitigation to protect and enhance fisheries in the Yellowstone watershed. TU reserves an option for three years from Closing to utilize up to 7 acre-feet of the mitigation water to be applied to Provisional Permit 43B 30066938.

1.3. Expenses of Sale.

- (a) Document Recording. TU shall both pay for the cost of recording and perform the recording of the documents necessary to effectively transfer title of the Water Rights.
- (b) Filing Form 608. FWP shall file Form 608 indicating a change of ownership of the Water Rights with the Montana Department of Natural Resources and Conservation (DNRC) and pay the associated fee.
- (c) Attorney Fees. TU and FWP shall each be responsible for their own attorney fees to complete this Water Rights Ownership Transfer Agreement.

SECTION 2. TU'S WARRANTIES

TU represents and warrants, to the best of its knowledge after reasonable investigation, as of the date of this Agreement that:

2.1. Ownership of Water Rights. TU is lawfully seized and in possession of the Water Rights and the Water Rights are free and clear of any liens, claims or encumbrances. FWP recognizes that water rights in the State of Montana are currently subject to the adjudication process in the Montana Water Court and that the Water Rights will be governed by the Final Decree issued by the Montana Water Court.

2.3. Legal Proceedings. There are no actions, proceedings, or investigations pending or threatened against TU or FWP that would interfere with the Parties' abilities to enter into this Agreement and to consummate the same.

2.4. Compliance with Law. There are no uncured violations of federal, state, or municipal laws, ordinances, or requirements outstanding that relate directly or indirectly to this Agreement.

2.5. No Other Agreement. TU has not entered into any other sales agreement, lease, contract, or other obligation regarding the Water Rights since it accepted ownership of the Water Rights.

SECTION 3. FWP'S REPRESENTATIONS AND WARRANTIES

FWP represents and warrants, to the best of its knowledge after reasonable investigation:

3.1. Charitable Organization. FWP is an agency of the State of Montana, validly existing and in good standing under the laws of the State of Montana, and qualifies as a charitable organization in good standing with the IRS under I.R.C. § 501(c)(3).

3.2. Authorization. FWP has the authority and legal right to execute, deliver and perform its obligations under this Agreement and all related documents.

3.3. Change In Use. FWP acknowledges that the historic beneficial uses of the Water Rights were associated with mining, and that a change in use to instream flow will be necessary. After TU's charitable donation of the Water Rights, FWP will seek authorization to change the beneficial purpose of the Water Rights to instream flow and mitigation by application to DNRC and will pursue such application with reasonable diligence.

3.4. No Violation. The execution and performance of this Agreement will not constitute a material breach of other obligations of FWP, nor does it violate any law or regulation applicable to FWP.

SECTION 4. OBLIGATIONS OF TU PRIOR TO CLOSING

4.1. Updated Information. TU shall notify FWP within a reasonable time of any event or circumstance which would have a material adverse effect or could cause a representation to be untrue at Closing (defined in Section 9 below).

4.2. Satisfy Conditions. TU shall use its best efforts to cause the Conditions Precedent to FWP's obligations to close, contained in Section 7, to be satisfied.

SECTION 5. OBLIGATIONS OF FWP PRIOR TO CLOSING

5.1. Satisfy Conditions. FWP shall use its best efforts to cause the Conditions Precedent to TU's obligation to close, as described in Section 6, to be satisfied.

5.2. Funding. FWP shall use its best efforts to obtain the funding required to carry out all conservation purposes related to this transfer in Water Rights ownership at or before Closing.

SECTION 6. CONDITIONS PRECEDENT TO TU'S OBLIGATION TO CLOSE

Unless expressly waived in writing by TU, TU is not obligated to close this transaction if the following conditions have not been satisfied at or before Closing:

6.1. Truth of Representations and Warranties. FWP's representations and warranties in this Agreement shall have been accurate in all material respects as of the date of this Agreement, and shall be accurate in all material respects at the time of Closing.

6.2. Performance of Obligations. FWP has performed at or before Closing all of its obligations under this Agreement to be performed at or before Closing.

6.3. Performance of Obligations. TU has performed at or before Closing all of its obligations under this Agreement to be performed at or before Closing.

SECTION 7. CONDITIONS PRECEDENT TO FWP'S OBLIGATIONS TO CLOSE

Unless expressly waived in writing by FWP, FWP is not obligated to close this transaction if the following conditions have not been satisfied at or before Closing:

7.1. Truth of Representations and Warranties. TU's representations and warranties in this Agreement shall have been accurate in all material respects as of the date of this Agreement, and shall be accurate in all material respects at the time of Closing.

7.2. Performance of Obligations. TU has performed at or before Closing all of its obligations under this Agreement to be performed at or before Closing.

7.3. Performance of Obligations. FWP has performed at or before Closing all of its obligations under this Agreement to be performed at or before Closing.

SECTION 8. DEFAULT AND TERMINATION

8.1. Default. If either Party fails to carry out any material provision of this Agreement, the other Party may serve a written notice upon the defaulting Party specifying the default. The defaulting party shall have forty-five (45) days from the date written notice of default is given to correct the default if the default is correctable. Upon default by FWP, TU shall have the right to terminate this Agreement. Upon default by TU, FWP shall have the right to terminate this Agreement.

8.2. Termination for Breach of Obligation or Failure of Condition. TU or FWP may terminate this Agreement by delivering notice to the other party of the following:

- (a) failure of a condition precedent to the terminating party's obligation to close under this Agreement, or
- (b) material breach of a material obligation owed by the other party to the terminating party under this Agreement at or prior to Closing, which material breach is defined in Section 9.5.

SECTION 9. CLOSING

9.1. Date and Location. The Closing shall take place at a mutually agreed location on the mutually agreed date of the ____ day of _____, 2018.

9.2. FWP's Obligations at Closing. At Closing, FWP shall deliver to TU a letter of acknowledgement of the charitable donation of TU's transfer in ownership of their Water Rights. The donative value of TU's charitable donation is the full fair market value of the Water Rights.

9.3. TU's Obligations at Closing. At Closing, TU shall deliver to FWP the following documents:

- i. Quitclaim deeds, properly executed and acknowledged, confirming and conveying title to the Water Rights to FWP (the "Deeds") in substantially the form attached hereto as Exhibit A;
- ii. Form 608, "DNRC Water Right Ownership Update," for each Water Right, properly executed and acknowledged; and
- iii. All other required documents.

9.4. Possession of Property. Possession of Property. At Closing, TU will put FWP into full possession and enjoyment of the interest in the Water Rights, reserving only an option to commit up to 7 ac-ft of the rights for mitigation associated with Provisional Permit 43B 30066938 for three years from Closing.

9.5. Timing of Closing. A failure on the part of either TU or FWP to close within sixty (60) business days of the events described in subsection 9.1 shall be considered a material breach of this Agreement.

9.6. Risk of Loss. All risk of loss or damage to the Water Rights not caused directly or indirectly by actions taken by, or on behalf of, FWP is assumed by TU until the time of Closing.

SECTION 10. POST-CLOSING OBLIGATION OF TU

10.1. Cooperation in Water Rights Change Authorization Process. At no cost to TU, TU shall cooperate with FWP and provide information to assist FWP upon reasonable request, in the preparation of an application to the Montana Department of Natural Resources and Conservation (“DNRC”) for authorization to change the Water Rights to instream flow and mitigation. TU makes no representations or warranties whatsoever with regard to the outcome of such application. TU, or its predecessors in interest, shall facilitate for FWP limited reasonable access to the property to which the Water Rights were formerly appurtenant, upon terms and conditions required by the landowners, for purposes of gathering information on the historic and current use of the Water Rights for inclusion in the application and for any required monitoring of flows in Bear Creek or Pine Creek upon DNRC’s approval of the change of use. Nothing in this paragraph shall obligate TU, or its predecessors in interest, to provide public access to the Property.

SECTION 11. INDEMNIFICATION

11.1. FWP’s Indemnification of TU. FWP shall indemnify and hold harmless TU against any claims, demands, judgments or actions by third parties challenging the use of the water transferred under this Agreement for instream purposes, resulting or arising out of FWP’s use of the water or challenging the validity of this Agreement on any grounds.

SECTION 12. MISCELLANEOUS

12.1. Notice. Any notice to be given under this Agreement shall be in writing and shall either be served upon the Party personally or served by first class mail directed to the Party to be served at the address of the Party set forth in this paragraph. A Party wishing to change its designated address shall do so by notifying the other Party in writing. Notice served by mail shall be deemed complete when deposited in the United States mail. Rejection or other refusal to accept notice, or the inability to deliver because of changed address for which no notice was given, shall be deemed to be receipt of the notice.

If to Montana Fish, Wildlife and Parks:

Montana Fish, Wildlife and Parks
P.O. Box 200701
Helena, MT 59620-0701

If to Trout Unlimited:

Trout Unlimited, Montana Water Project
321 East Main Street, Suite 411
Bozeman, MT 59715

12.2. Assignment and Delegation. The provisions of this Agreement shall be binding upon the officers, members, administrators, successors and assigns of the Parties in like manner as upon the original Parties.

12.3. Cooperation of Parties. The Parties agree to cooperate fully and to provide such assistance and information as may be necessary to implement this Agreement.

12.4. Amendment. This Agreement may not be modified or amended except by the written agreement of the Parties. This Agreement may not be modified or amended orally.

12.5. Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

12.6. Force Majeure. Neither Party shall be liable to the other Party, nor deemed to be in breach of this Agreement, for failure or delay in performance arising from a Force Majeure. Force Majeure means an event beyond the reasonable control of the affected Party, and which the Party is unable to prevent or provide against by exercising reasonable diligence.

12.7. Governing Law. The laws of the State of Montana govern this Agreement.

12.8. Exhibits. The exhibits appended to this Agreement and referenced herein are incorporated into this Agreement.

12.9. Limitation on Remedies. In the event of termination of this Agreement for any reason or a breach of this Agreement by either Party, each Party waives the right to seek or collect money damages from the other Party for such termination or breach.

12.10. FWP's Assumption of Risk. FWP represents that it has independently reviewed, investigated, and verified the Water Rights, and satisfied itself with respect to all aspects of the Water Rights, including without limitation, the quality, quantity, source, issues of historic use, exercise and availability of water thereunder, relevant government rules and regulations, procedures and statutes concerning use of water thereunder and ability to change the use to instream flow, and the legal, institutional and political issues attending the transfer of the Water Rights to FWP, and has

independently determined that the Water Rights exist and are adequate for the use intended by FWP. FWP has conducted its own due diligence and is not relying on any information, statements or representations made by TU with respect to the Water Rights. FWP accepts the water rights AS IS and assumes all risks associated therewith.

12.11. No Warranty. TU makes no representation or warranty, express or implied of any kind with respect to information it has provided concerning the Water Rights, including their accuracy, completeness, validity, legal sufficiency or suitability for reliance thereon by FWP. TU makes no warranty or representation, and shall have no liability, express or implied, with respect to the Water Rights, including but not limited to the validity, value, uses, limitations, quality or availability of water under the Water Rights.

12.12. Release of Claims. FWP and anyone claiming by, through or under FWP, hereby waives its right to recover from and fully and irrevocably releases, to the fullest extent permitted under applicable law, TU, its directors, officers, employees, affiliates, controlling persons, agents and representatives of TU (“Released Parties”) from any and all claims that it may now have or hereafter acquire against any of the Released Parties for any costs, loss liability, damage, assessments, expenses (including without limitation reasonable attorney’s fees) demand, claim action or cause of action arising from or related to the Water Rights. This release includes claims of which FWP is presently unaware or which FWP does not presently suspect to exist which, if known by FWP, would materially affect FWP’s release of the Released Parties. The provisions of this Section and release of claims shall survive the Closing.

The Parties execute this Agreement as of the date first indicated above.

Trout Unlimited

By: _____
Scott Yates
Trout Unlimited’s Western Water & Habitat Program

Montana Fish, Wildlife and Parks

By: _____
Martha Williams
Director, Montana Fish, Wildlife and Parks

EXHIBIT A. DEEDS TRANSFERING WATER RIGHTS

After recording, return to:

Legal Department
Montana Fish, Wildlife, and Parks
1420 East Sixth Avenue
Helena, MT 59620

QUITCLAIM WATER RIGHTS DEED

FOR VALUABLE CONSIDERATION, the receipt of which is acknowledged,
the undersigned,

TROUT UNLIMITED, a Michigan non-profit corporation (“TU”), with a
mailing address of 321 East Main Street, Suite 411, Bozeman, MT 59715,

hereby quitclaims, transfers and remises to

MONTANA FISH, WILDLIFE AND PARKS, a state agency of the
State of Montana (“FWP”), with a mailing address of 1420 East Sixth
Avenue, Helena, MT 59620-0701,

all of TU’s right, title, and interest in and to that certain water right currently appurtenant
to real property located in Park County, Montana, which water right is described as
follows:

Water right claim number **43B 134019 00**, from Pine Creek with a
maximum flow rate of 2.50 cubic feet per second, with a maximum
volume of 907.22 acre-feet.

TO HAVE AND TO HOLD unto FWP and FWP’s successors and assigns,
forever, **SUBJECT TO THE FOLLOWING:**

- (a) Water rights with earlier priority.
- (b) The water rights adjudication process instituted in the State of Montana.

- (c) Montana Department of Natural Resources rules and restrictions.
- (d) Local, state and federal rules, regulations, laws, statutes and acts.

Except as set forth in paragraphs (a) through (d) above, TU covenants that together, they are the sole owners of the water right transferred hereby, and that the same is free from all encumbrances.

TO HAVE AND TO HOLD unto FWP and FWP's heirs, successors and assigns, forever.

DATED: This ____ day of _____, 2017.

Trout Unlimited, Inc.

By: _____

Scott Yates

Trout Unlimited's Montana Water & Habitat Program, Director

STATE OF MONTANA)

:ss

County of Gallatin)

Subscribed and sworn before me this _____ day of _____, 20_____

Notary's Signature _____

Notary for the State of _____

Residing at _____

My commission expires _____, 20_____

After recording, return to:

Legal Department
Montana Fish, Wildlife, and Parks
1420 East Sixth Avenue
Helena, MT 59620

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FOR VALUABLE CONSIDERATION, the receipt of which is acknowledged,
the undersigned,

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mailing address of 321 East Main Street, Suite 411, Bozeman, MT 59715,

hereby quitclaims, transfers and remises to

MONTANA FISH, WILDLIFE AND PARKS, a state agency of the
State of Montana (“FWP”), with a mailing address of 1420 East Sixth
Avenue, Helena, MT 59620-0701,

all of TU’s right, title, and interest in and to that certain water right currently appurtenant
to real property located in Park County, Montana, which water right is described as
follows:

Water right claim number **43B 134641 00**, from Bear Creek with a
maximum flow rate of 22.50 cubic feet per second, with a maximum
volume of 8,165.0 acre-feet.

TO HAVE AND TO HOLD unto FWP and FWP’s successors and assigns,
forever, SUBJECT TO THE FOLLOWING:

- (a) Water rights with earlier priority.
- (b) The water rights adjudication process instituted in the State of Montana.

- (c) Montana Department of Natural Resources rules and restrictions.
- (d) Local, state and federal rules, regulations, laws, statutes and acts.

Except as set forth in paragraphs (a) through (d) above, TU covenants that together, they are the sole owners of the water right transferred hereby, and that the same is free from all encumbrances.

TO HAVE AND TO HOLD unto FWP and FWP's heirs, successors and assigns, forever.

DATED: This ____ day of _____, 2017.

Trout Unlimited, Inc.

By: _____

Scott Yates

Trout Unlimited's Montana Water & Habitat Program, Director

STATE OF MONTANA)

:ss

County of Gallatin)

Subscribed and sworn before me this _____ day of _____, 20_____

Notary's Signature _____

Notary for the State of _____

Residing at _____

My commission expires _____, 20_____